



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I  
ONE CONGRESS STREET SUITE 1100  
BOSTON, MASSACHUSETTS 02114-2023

VIA EMAIL AND FIRST-CLASS MAIL

November 25, 2009

Commonwealth of Massachusetts  
Office of Coastal Zone Management (CZM)  
Attn. Dave Janik  
251 Causeway Street, Suite 800  
Boston, MA 02114-2136

Re: EPA Comments on 2009 New Bedford/Fairhaven Municipal Harbor Plan

Dear Mr. Janik,

EPA appreciates the opportunity to comment on the 2009 New Bedford/Fairhaven Municipal Harbor Plan (the Harbor Plan), and notes that much of the dredging and disposal-related initiatives envisioned in it are proposed to be implemented pursuant to the New Bedford Harbor State Enhanced Remedy (SER). As you know, the SER is contained in EPA's 1998 Record of Decision for the New Bedford Harbor Superfund Site (1998 ROD), consistent with the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 *et. seq.* (CERCLA) and its implementing regulations, the National Contingency Plan, 40 C.F.R. § 300 *et. seq.*; specifically section 300.515(f). In the 1998 ROD, EPA agreed to the Commonwealth's request that navigational dredging in the Harbor be included as an enhancement of the remedy as long as no federal funds are used to implement the enhancement.

You may remember that EPA entered into a Memorandum of Agreement (MOA) with the Commonwealth of Massachusetts on January 10, 2005 to further define the scope of the SER. This Memorandum, drafted in coordination with the City of New Bedford, also sets out a process for identifying projects for inclusion in the SER and defines the roles and responsibilities of federal, state and local entities, identified as Resource Agencies, in that process.

One of the greatest benefits of inclusion in the SER is the streamlined permitting process. Pursuant to §121(e) of CERCLA onsite activities conducted as part of the Superfund cleanup are not required to secure permits. This permitting exemption extends to projects included in the SER. To date EPA, the State and the Resource Agencies have generally been meeting monthly to review and discuss the SER implementation in accordance with the understandings reached in the MOA to ensure the SER remains true to the scope originally envisioned and to ensure that all performance standards for the navigational dredging projects are met.

EPA offers the following comments on the 2009 Harbor Plan in its continuing role as the lead agency for the Harbor cleanup and support agency for the SER as part of the Harbor planning process.

Our detailed comments are as follows:

1. EPA believes that implementation of the SER with the support of all participating Resource Agencies has been highly successful to date. The City, through the Harbor Development Commission, has carefully planned and coordinated all navigational dredging projects with the SER group and has ensured that all projects have stayed within the scope of the enhancement as defined by the MOA and has met all performance standards. EPA looks forward to continuing this working relationship with the Harbor Development Commission and all Resource Agencies as the SER moves forward.
2. EPA supports the inclusion of Superfund harbor cleanup considerations into the Harbor Plan. We look forward to continuing the coordination with the SER working group in hopes of finding and acting on synergies that may lead to a shorter timeframe to complete the Harbor cleanup while furthering the goals of the Harbor Plan.
3. EPA disagrees with some of the characterizations in the Harbor Plan regarding project inclusion in the SER. For instance, Section 7.2.1.2, page 7-4: EPA does not agree that inclusion of a project under the SER is defined by the location of certain contaminants present in the sediments; we agree that this is a factor that should be considered along with other factors such as inclusion in the Dredge Management Area, location within the boundary of the New Bedford Harbor Site and consideration and agreement by the SER group. See also page 7-6 and the last bullet on the top of page 7-10: EPA disagrees that the SER “allows for the remediation of all harbor contaminated sediment under a streamlined dredging process” or that all contaminated sediment within the Superfund site boundaries should be dredged as part of the SER process. As previously stated, inclusion of projects in the SER is determined by many factors. EPA also notes on page 7-6 the description of projects that would fall under the SER – EPA agrees that these are the types of projects that *may* be included in the SER but are still subject to other criteria including evaluation by the SER group.

EPA has identified, in comments 4 and 5 below, specific projects presented in the Harbor Plan that we do not agree would be included within the SER. Conversely, this is not meant to be an agreement that all other projects set out in the Harbor Plan should be included under the SER umbrella of streamline permitting; rather, EPA refers back to its previous comment that any recommended project in the Harbor Plan should undergo review by the Resource Agencies for inclusion in the SER.

- 4.. EPA does not agree that bulkhead extensions built to store confined aquatic disposal (CAD) cell material should, *a priori*, be covered by the SER’s streamlined regulatory process. Potential

impacts to natural resources, flood water storage, changes in land use, among other things, will require review and evaluation that may well be beyond the scope and purview of the SER process. EPA also notes that the first condition listed in the Harbor Plan for such bulkhead construction permit streamlining (p.8-21) does not define the degree of sediment contamination required to meet the condition. Absent additional definition in this regard EPA is unable to agree to it.

5. EPA cannot support inclusion of the three proposed dredging projects south of the hurricane barrier listed in Table A-4 (Davy's Locker, Former BWW Banquet Room, and Boat Ramp) into the SER process. This geographical area is outside the boundaries of the 1998 ROD and its provision for the SER, and thus cannot be included as part of the enhancement.

6. EPA supports the concept of pilot testing and additional research into the appropriate design of mooring anchors to be used within a CAD cell cap. Based on EPA's draft computer modeling performed to date for potential Superfund CAD cells, the first (i.e., lowest) foot of cap must be kept free of penetration from such anchors, since over time contaminants from CAD cell diffusion would accumulate in this first foot of cap.

7. It should be noted that the SER process will terminate once the Superfund upper and lower harbor cleanup, as required in the 1998 ROD, is complete.

8. Page 7-5: The definition of ARARs is Applicable or Relevant and Appropriate Regulations.

9. Page 7-14: The Harbor Plan supports the reuse of suitable material generated from CAD cell construction as capping for sediments either not targeted to be dredged under the Superfund cleanup or for navigational dredging or that will not be dredged for in excess of 10 years. EPA notes that capping sediments is not currently in the 1998 ROD or the SER. Any change to include such action for Superfund targeted sediments, even those that may not be addressed within the next 10 years would require that EPA issue a future decision document as a change to the remedy set out in the 1998 ROD.

10. Section 7.3.3, p.7-57: based on EPA's understanding of the conceptual bulkhead and terminal expansion for South Terminal envisioned in the City of New Bedford's latest TIGER grant application, we disagree that these proposed changes would be "modest". EPA notes that the grant application is significantly inconsistent with the Harbor Plan. See also comment #4 above.

11. p.8-25: it is highly unlikely that EPA's dewatering facility will be available for redevelopment "within the next five years". EPA also notes that, contrary to the statement made on p.7-55, EPA's use of the dewatering facility is not lease-based. EPA further notes that use of the term "CDF D" on pp.7-55 and 7-56 is inappropriate, since the dewatering facility is not a CDF, but rather a marine bulkhead (i.e., no contaminated sediments are stored in it). CDF D was

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eliminated from the Superfund cleanup plan in an Explanation of Significant Differences issued in 2002.

Please do not hesitate to contact me at 617 918 1329 should you have any questions in this regard.

Sincerely,

*Dave Dickerson / cdc*

David Dickerson  
Co- Project Manager

cc: Paul Craffey - MassDEP  
Kristin Decas - New Bedford HDC  
William Roth - Town of Fairhaven  
Cynthia Catri - EPA